

MEMORANDUM

To: Board of Education

From: Board of Education Attorney

Subject: Book Restrictions in High School Library

1. BACKGROUND

In light of the banning of several titles in the school district and the controversial termination of librarian Ms. Murphy for her provision of a banned book to a student during school the school board has faced legal threats. The LGBTQ+ Young Adult book that got the Librarian dismissed reportedly had graphic sexual descriptions deemed inappropriate for minors. Though Ms. Murphy admits to being aware of the book being banned, there is debate on both the legality and principle of banning, and whether Ms. Murphy was justly punished. The Board faces accusations of violating the first amendment rights of the students by denying them information, violating the 14th amendment by targeting books about minorities, as well as claims that the administration has overreached their authority on librarian's conduct. It is recommended that the Board of Education thoroughly consider the implications of its decisions to avoid serious legal complications, the details of which will be assessed in the following memo.

2. ANALYSIS & RECOMMENDATIONS

a. FIRST AMENDMENT VIOLATION (OBSCENITY)

The first question of concern is a very serious allegation – the claim that the School Board's book banning violates the Constitution's first amendment. The first amendment of the United States' Constitution protects the right to freedom of speech ("The Constitution") – an ideal that is clearly violated by censorship. One exception to this is in publicly funded schools and libraries;

when media can be proved “derogatory, pornographic or obscene,” it is permissible to censor if public officials decide that it violates “community standards,” (Webb). While the intention behind banning the books may have been to preserve the wellbeing of students, the definition of “obscene” is contested and the book in Ms. Murphy’s case: Jack of Hearts (and Other Parts) by Lev A.C. Rosen may not qualify. The Supreme Court in *Board of Education, Island Trees Union Free School District v. Pico* (1982) ruled 5-4 that public schools can ban material if it is “pervasively vulgar” in comparison to allowed books, but that it is unconstitutional to censor “simply because they dislike the ideas contained in those books,” (Webb). According to the precedent set in this case, the School Board is within its rights to ban the titles, but only if they can be proved pervasively vulgar and obscene – more so than any other books provided by the school.

b. FOURTEENTH AMENDMENT VIOLATION (DISCRIMINATION, EQUAL TREATMENT)

Once the banned texts are examined, even if they are determined vulgar, it is important to apply the equal examination of all books in the school library. In this situation, ensuring equality means that it should be assured that all books require the same extent of obscenity to be banned; if it turned out that the literature was being censored on an unfair basis, the Board would be in violation of section 1 of the 14th amendment. This segment declares that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States” (“14th Amendment”). The Boards actions would legally be considered discriminatory in the case that Jack of Hearts (and Other Parts) was not found to be more explicit than unquestioned books on the library shelves without LGBTQ+ themes. Several other school districts lobbying for the book bans have made this mistake and faced ramification for their violations. Based on 2,532 documented cases of book bans reported to PEN America from 21-2022, 41% of banned or

challenged books “explicitly address LGBTQ+ themes,” 40% “contain protagonists or secondary characters of color,” and 21% “directly address issues of race and racism” (“Banned in the USA”). These statistics highlight situations of selectivity that should be avoided when making decisions about censorship. The commonality of un-constitutional policies like those represented in the study make the School Board especially prone to legal scrutiny, since the issue is on the radar of opposing parents, government officials, and courts.

c. DUE PROCESS VIOLATION

An equally important question is the legitimacy of Ms. Murphy’s termination. On this issue, there are several conflicting accounts of the legality of immediate termination, as well as disagreements on what actions may be considered severe to constitute termination. As summarized by attorney-at-law Steven E. Glink, though teachers agree to anything included in their contracts, they maintain constitutional rights such as “Substantive and procedural due process rights, including the teacher right to receive notice of termination and right to hearing, [and] Freedom of expression and association...” (Glink). In this case, Ms. Murphy’s right to due process was likely violated. The Connecticut General Assembly office of legislative research states that “If a school board wishes to dismiss a tenured or nontenured teacher it must grant explicit due process rights and follow the termination procedures and timetables specified in state law,” meaning that if the School Board still wishes to terminate librarian Ms. Murphy, they must reinstate her to remedy their hasty actions and complete the proper process as detailed by the law.

The following “action deadline” describes how much time the state recommends giving, and the arrangements that must be followed before a scrutinized teacher may be removed. This timetable includes but is not limited to: a written notice informing the teacher of consideration of

termination, seven days for the teacher to inquire in writing about status of termination, seven days before the Board can state their reasoning for termination, and a 20 day period for the teacher to submit a written request a hearing before the Board of Education (Lohman). Seeing as none of the previous actions were taken, and none of the written documents could be produced in court as evidence, it is imperative that the Board be ready to either allow Ms. Murphy due process or face serious litigation by the state court in the probable event of Murphy and her legal team pressing charges.

d. DUE CAUSE FOR TERMINATION

Because Ms. Murphy was not given proper notice of termination, to defend themselves in court the Board of Ed must correct this incident. Even once the corrections have occurred, Ms. Murphy may still dispute her removal. One way the Board of Ed can defend firing Murphy would be to prove her willful insubordination. This offence would be due cause for her removal although the court would have to take it upon themselves to decide whether the incident is severe enough, (Glink). A 2011 study from the University of Alabama found that out of 129 cases of teacher insubordination, “Sixty-five cases dealt with the teacher or principal's inability to follow Board policy, direct orders, or directives from superiors.” According to this definition of insubordination Ms. Murphy would be guilty. The cases from the study could then be divided into two types of educators, the first being “where there was inadequate substantiation to justify termination.” As in these cases, if the Board cannot find substantial evidence of insubordination, the law will not be in their favor. The second type of educators were “the employees who... were incapable of being models representative of the community morals,” (O’Neal). Murphy’s actions could be proof of her protesting the community standards communicated in the book restriction.

If this can be supported, is most likely that the Board of Education will have their decision upheld and avoid unnecessary legal ramifications.

3. CONCLUSION

Due to the nature of the recent events concerning both banning a list of books and the immediate termination of Ms. Murphy for violating the ban, there is only one permissible reaction to any possible charges. In a researched opinion based on legal precedent and state/federal legislature, in order to minimize retaliation against the Board and maximize the probability of their determinations being upheld in court, immediate action should be taken to investigate the contents of banned books to avoid discrimination. It is then advocated that Ms. Murphy be allowed the legal process she is entitled to by the Constitution and to be either proved fit or unfit to teach through proper procedures in a court of law. In the interest of achieving all legal objectives of the Board, it is strongly suggested that these actions be taken in proper time, with all the proper preparations, legal and otherwise.

WORKS CITED

“14th Amendment.” *Legal Information Institute*.

<https://www.law.cornell.edu/constitution/amendmentxiv>. Accessed 6 Dec. 2022.

Friedman, Jonathan. “Banned in the USA: The Growing Movement to Censor Books in Schools.” *Pen America*, Edited by Nadine Farid Johnson, PEN America, 2022.

<https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools/>.

Accessed 6 Dec. 2022.

Glink, Steven E. "Teacher Rights." *Steven E. Glink Attorney-at-Law*, Education Rights.

<https://www.educationrights.com/teacherrights.php>. Accessed 6 Dec. 2022.

Lohman, Judith S. "TEACHERS; TEACHER TENURE." *The Connecticut General Assembly*,

10 Aug. 1994. [https://cga.ct.gov/PS94/rpt%5Colr%5Chtm/94-R-](https://cga.ct.gov/PS94/rpt%5Colr%5Chtm/94-R-0722.htm#:~:text=Under%20the%20law%2C%20boards%20must,present%20and%20re)

[0722.htm#:~:text=Under%20the%20law%2C%20boards%20must,present%20and%20re-presented%20by%20counsel](https://cga.ct.gov/PS94/rpt%5Colr%5Chtm/94-R-0722.htm#:~:text=Under%20the%20law%2C%20boards%20must,present%20and%20re-presented%20by%20counsel). Accessed 6 Dec. 2022.

O'Neal, Cory Shawn. "Court Cases about Teacher Insubordination." *Eric*, 2013.

<https://eric.ed.gov/?id=ED561660>. Accessed 6 Dec. 2022.

"The Constitution." *The White House*. [https://www.whitehouse.gov/about-the-white-house/our-government/the-](https://www.whitehouse.gov/about-the-white-house/our-government/the-constitution/#:~:text=The%20First%20Amendment%20provides%20that,for%20a%20redress%20of%20grievances)

[constitution/#:~:text=The%20First%20Amendment%20provides%20that,for%20a%20redress%20of%20grievances](https://www.whitehouse.gov/about-the-white-house/our-government/the-constitution/#:~:text=The%20First%20Amendment%20provides%20that,for%20a%20redress%20of%20grievances). Accessed 6 Dec. 2022.

Webb, Susan. "Book Banning." *The First Amendment Encyclopedia*, Middle Tennessee State

University, 2009. <https://www.mtsu.edu/first-amendment/article/986/book-banning>.

Accessed 6 Dec. 2022

;